What Can Be Done About

LOW PRICED FOOD IMPORTS

Ministry of Agriculture and Food

Ontario

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WHAT CAN BE DONE ABOUT LOW PRICED FOOD IMPORTS

by

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INTRODUCTION

To facilitate international trade, nations have agreed to fix tariff levels. The most important agreement is the General Agreement on Tariff and Trade (GATT). Under Canadian law and consistent with its international agreements, a number of means exist by which Canada can vary the protection it gives the domestic producers against foreign competition. This publication will discuss various possibilities. The items covered are:

(1) the anti-dumping program,
(2) countervailing duties,
(3) quota programs,
(4) temporary safeguard measures,
(5) tariff revision,
(6) voluntary arrangement.

The publication concludes with a section on documenting the case for a change in protection.

ANTI-DUMPING PROGRAM

Dumping is defined as selling a product abroad at a lower price than that for which it is sold in the domestic market. The GATT condemns dumping only if it causes or threatens material injury. The GATT does not ban injurious dumping but does permit countries to prevent the dumping of goods which will be detrimental to local producers. The Anti-dumping Code (part of the GATT) establishes action to combat dumping. Under Canadian law, the responsibility for determining whether dumping has occurred lies with the Deputy Minister of the Department of National Revenue. Responsibility for determining whether injury is present lies with the Anti-dumping Tribunal.

Dumping is not merely selling goods cheaply. For example, a bumper crop of tomatoes in Florida would drive the price lower, leading to an increase in sales of Florida tomatoes in Ontario and a drop in prices here. However, unless Florida tomatoes were sold for export at

a price lower than the Florida domestic price (at a similar level of trade, for example wholesale), no dumping would have occurred. Similarly, if the Taiwanese mushroom industry can produce at prices which permit heavy penetration of the Ontario market, no dumping has occurred unless Taiwanese mushrooms are being sold for export at a price lower than the domestic price of mushrooms (at a similar level of trade).

The Federal Anti-dumping Act, administered by the Department of National Revenue, permits the imposition of extra duties upon proof that:

(a) goods are dumped into Canada, and
(b) the domestic industry is being materially injured, or its development materially retarded by the dumping.

If (a) and (b) apply, then import quotas may be imposed in addition to or instead of anti-dumping duties. This would be done under terms of the Export and Import Permits Act.

Groups who wish anti-dumping duties to be imposed or quotas to be applied should file a complaint with the Deputy Minister of National Revenue, giving reasons for believing that the goods in question are dumped, and providing evidence of material damage to a major proportion of the Canadian industry. The Trade Commissioner's Office of the Federal Department of Industry, Trade and Commerce will, upon request, check the prices at which the goods in question are selling in the country of export. For the purpose of the Anti-dumping Act, the price comparison should be made at a similar level of trade (for example, wholesale prices to the domestic trade, as compared to wholesale prices to the export trade). The complaining group itself will have knowledge of how the allegedly dumped goods have damaged the Canadian industry (i.e. through reduction in production, buildup of inventories, under-utilized capacity, loss of employment, reduced profitability, etc).

The Deputy Minister of National Revenue determines whether dumping has occurred by establishing the "normal price" in the domestic trade in the country of export. This normal price is then compared to the export price. If the export price is less than the normal price, then dumping is determined to have occurred. The Deputy Minister may then make a "preliminary determination" and impose provisional Anti-dumping duties. The amount levied on any

particular shipment would be the difference between the normal price and the export price for that shipment.

After the preliminary determination, the Anti-dumping Tribunal holds hearings to determine if, in fact, the dumping has caused or is threatening material injury to production in Canada.

The Anti-dumping Tribunal is an independent body with the status of a court. All interested parties may appear before the Tribunal. The groups invited would include: the group who lodged the complaint, domestic trade associations, importers and exporters of the product. If the Tribunal finds there is injury because of dumping, then the Deputy Minister will make a "final determination". As with the preliminary determination, the level of anti-dumping duty would be the difference between the normal price and the export price.

Both the Deputy Minister's decision that dumping has occurred and the Tribunal's decision that the Canadian industry has been damaged are subject to appeal and reversal. In addition, the group complaining has the right to ask the Tribunal to investigate the question of injury even though the Deputy Minister has ruled that no injury has occurred.

The Tribunal periodically reviews past decisions; and if it decides that dumping and/or damage no longer are present it can and does reverse decisions. Prior to such a reversal, hearings would again be held. The Deputy Minister has the right to alter the determined normal price based on changes in conditions in the country of export.

Groups complaining have a better chance to obtain favorable rulings from the Deputy Minister and the Tribunal if complaints and briefs are well documented and presented. The services of a lawyer could prove helpful.

COUNTERVAILING DUTIES

Countervailing duties can be imposed to protect domestic producers from competition from imports subsidized by a foreign government, if there is material damage to Canadian producers. The subsidy involved could be a payment by a government to the producers of a particular good, or the sale of a product at a loss by a government or its agency. Note that a subsidy which is paid on all production (not just exports) can also lead to imposition of countervailing duties by an importing country.

Groups wishing to see countervailing duties imposed should write to the federal Minister of Finance (who has investigative responsibility) documenting as well as possible the nature of the subsidy and the damage the imports are causing. As with anti-dumping duties, the group laying the complaint should represent a significant portion of the Canadian industry.

Governments around the world generally are loath to impose countervailing duties since their imposition suggests that another government (as opposed to a company in the case of dumping) is doing something objectionable. Canada has never imposed countervailing duties, although sometimes matters which might be handled through the law on countervailing duties can be dealt with under the anti-dumping law.

QUOTA PROGRAMS

As mentioned above quotas on imports may be imposed to prevent goods being dumped into Canada.

Quotas may also be imposed to support a national supply management program which limits the quantities of a product produced or marketed in Canada. The quotas would be high enough to allow foreign countries to maintain their historic percentage of the Canadian market.

Quotas may be imposed to supplement action taken under the Agricultural Stabilization Act, the Agricultural Co-operative Marketing Act or the Canadian Dairy Commission Act. The intention would be to limit the import of a product which might be attracted by higher prices created by action under the three acts mentioned.

Quotas may also be applied to implement an arrangement or commitment made by Canada with a foreign country.

All these quotas would be imposed under terms of the Export and Import Permits Act. Groups wishing quotas to be imposed under this act should forward their request to the federal Minister of Agriculture or the federal Minister of Industry, Trade and Commerce.

TEMPORARY SAFEGUARD MEASURES (SURTAX)

The federal Customs Tariff Act (section 8) allows the federal Cabinet to introduce a temporary (180-day) surtax when a Canadian industry is threatened with serious injury by imports. Temporary surtaxes to protect domestic pro-

ducers from injurious imports are permitted under certain conditions under the GATT.

Groups wishing temporary protection by surtax should send their requests to the federal Minister of Finance detailing the source of the expected or actual injury, its severity, the size of the threatened or damaged Canadian industry, the number of jobs involved, etc. The Minister of Finance may then recommend that a temporary surtax be introduced.

No question of wrong-doing by foreign suppliers is involved here. In the example on tomatoes (mentioned in page 3) there is no suggestion that the Florida tomato producers did anything wrong in producing a large crop. Yet, temporarily inexpensive Florida tomatoes could damage the Canadian producers.

Temporary protection granted by cabinet under terms of the Customs Tariff Act has a maximum life of about 180 days unless sanctioned by Parliament.

In the agricultural sector, Canada has imposed temporary measures to protect greenhouse tomato producers, cherry producers, and beef producers.

Foreign countries do not like barriers against their exports to be raised at a time when their producers are already receiving low prices because of a large crop. Sometimes they retaliate if the country imposing temporary surtaxes does not give compensation in the form of easier access for related commodities. The possible necessity of offering compensation and the possibility of retaliation if compensation is not offered limit the use of surtaxes.

TARIFF REVISION

Tariff schedules are fixed by act of Parliament. Apart from some minor exceptions, increases in tariffs must be approved by Parliament.

The GATT does include provision for countries who are members of the GATT to raise tariffs above levels they had agreed to maintain. By way of compensation, countries raising tariffs are to reduce tariffs on other commodities exported by the countries whose exports have been affected by the increase in tariffs. If this does not happen then retaliation is permitted.

Thus, increasing protection for one commodity may lead to reduced protection, or less favorable access to foreign markets, for other closely related commodities.

Producers of the commodity affected would likely not approve.

Groups desiring revision in tariffs should write to the Director of Tariffs, Federal Department of Finance, outlining their requests and reasons for it. The Director of Tariffs studies the request and may make a recommendation to the Minister of Finance. In the case of far-reaching proposals, the Minister may decide to refer the matter to the Tariff Board for detailed review. The Tariff Board would then conduct an investigation which would include hearings at which all interested parties could appear. The report of the Board would go to the Minister of Finance who might then choose to bring a bill before Parliament providing for changes in tariff.

Canada (together with other developed countries) has recently granted tariff concessions (General Preference Tariffs/GPTs) to the less developed countries. Some of the concessions offered were on agricultural commodities. An effort was made to select for preferential treatment agricultural commodities not produced by Canada. The GPTs are not "bound" so that they may be withdrawn or altered by Canada unilaterally. Any group wishing these preferential rates to be altered should make application to the federal Minister of Finance.

Understandably, Canada would prefer not to withdraw trade concessions made to the less developed nations. In the current Tokyo Round of GATT negotiations, the less developed countries are seeking an international agreement to bind the preferential tariff concessions so as to limit the right of developed countries to unilaterally withdraw these concessions.

VOLUNTARY ARRANGEMENTS

Some countries (Taiwan and the USSR are prime examples) are not signatories to the GATT agreement. As such, their trading partners are not bound to grant them GATT treatment. Canada could, therefore, induce such countries to "voluntarily" restrict sales to Canada.

Even countries which are signatories to the GATT make "voluntary" arrangements governing their exports. For example, Canada concluded an agreement in 1976 with New Zealand and Australia which provides that meat from these countries will be sold into Canada at no less than 6¢ a pound less than New Zealand and Australian beef being sold to the U.S. This example is typical and the background is worth spelling out in some detail.

The EEC limits imports of meat. This tends to increase Australian and New Zealand sales to North America, depressing prices here. The U.S. has reacted by the application of the U.S. Meat Import Law. This led to reduced Australian and New Zealand meat sales in the U.S., to increased sales in Canada and reduced meat prices in Canada. When the Canadian government became aware of this fact, Canada negotiated with Australia and New Zealand who voluntarily agreed to the price arrangement. In the absence of a voluntary arrangement, the Canadian Parliament might have passed a law limiting Australian and New Zealand imports of beef. This provided the incentive for the voluntary agreement.

If Canadian producer groups believe they are being damaged by unfair trading practices of other countries, they may contact the federal Minister of Agriculture who would investigate to see if a voluntary arrangement is desirable and possible.

DOCUMENTING YOUR CASE

It is important that groups wishing to lodge a complaint under any of the above possibilities provide accurate and complete information with regard to the following points:

(1) Source: Complainants must specify the country or countries from which the low-priced product originates.

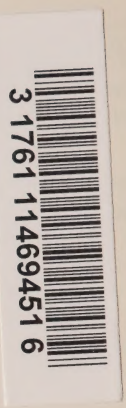
(2) Price: Pricing information must be documented with copies of invoices or signed offers being specific as to what place in the marketing chain the price applies. The Trade Commissioner's Office of the Federal Department of Industry, Trade and Commerce will, upon request, check to see at what price the goods in question are selling in the country of export.

(3) Cost of production: The question of injury must be verified with valid cost of production figures. It is helpful if the study is conducted by a competent accountant and based on a significant portion of the industry.

(4) Injury or threat of injury: Proof of injury must be supported by evidence such as loss of employment, bankruptcy or closure of plants, underutilization of resources, etc.

(5) Time: Since it takes time to process each case, it helps if the Minister of Finance is notified in advance of the expected situation and requested to monitor price and import trends.

(6) Because of the complexity of the legal and governmental process involved, it often helps to employ consultants who specialize in these matters.



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